CV 2010-003106 11/08/2010

HON. EDWARD O. BURKE

CLERK OF THE COURT
L. Nixon
Deputy

KEITH DEERING, et al. LANCE R BROBERG

v.

GARY WHITING, et al. GREGORY G MCGILL

WADE M BURGESON PAUL A CONANT MARK DEATHERAGE JARED C SIMMONS AMY J GITTLER DONALD F ENNIS STEVEN D JEROME

#### MINUTE ENTRY

Prior to the commencement of the hearing, plaintiffs Keith Deering, Mark Renberg, Chris Lombardo, plaintiffs in CV2010-006635 and defendants, Karl and Diana Hiatt, Dark Comet Games, LLC, Fresh Start Studios, LLC in CV2010-025559 exhibits 1-9 and 69, Court-appointed Receiver, Edward M. Burr, Jr.'s exhibits 10-11, defendants, CME Board of Directors and CMG Board of Directors' exhibits 12-38 and defendant, Gary Whiting's exhibits 39-68 are marked for identification.

9:39 a.m. This is the time set for Evidentiary Hearing. Plaintiffs in CV2010-003106, plaintiffs in CV2010-006635 and defendants, Karl and Diana Hiatt, Dark Comet Games, LLC, Fresh Start Studios, LLC in CV2010-025559 are represented by counsel, Paul A. Conant and

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Melissa A. Emmel. Intervenors, Samual Dalembert, David Roberts and Hetal Shah are telephonically represented by counsel, Mark Deatherage and Tim Lynch. Court appointed Receiver, Edward M. Burr, Jr. is represented by counsel, Wade M. Burgeson. Proposed Receiver, the MCA Financial Group, Inc. is present and represented by counsel, Steven D. Jerome for Donald F. Ennis. Defendant, Gary Whiting is present on his own behalf. Defendants, CME Board of Directors and CMG Board of Directors are represented by counsel, Gregory G. McGill.

Court Reporter Scott Coniam is present and a recording of the proceedings is made by audio and/or videotape.

Discussion is held regarding what issues shall be addressed today.

Counsel for defendants, CME Board of Directors and CMG Board of Directors make an oral Objection to release court-appointed Receiver, Edward M. Burr, Jr. and his final accounting. Court and counsel agree to hear this issue first.

Edward M. Burr, Jr. is sworn and testifies.

Defendants, CME Board of Directors and CMG Board of Directors' exhibit 19 is received in evidence.

Mr. Burr continues to testify.

11:14 a.m. Court stands at recess.

11:29 a.m. Court reconvenes with respective parties and counsel.

Court Reporter Scott Coniam is present and a recording of the proceedings is made by audio and/or videotape.

Mr. Burr continues to testify.

12:07 p.m. Court stands at recess.

1:35 p.m. Court reconvenes with respective parties and counsel.

Court Reporter Scott Coniam is present and a recording of the proceedings is made by Docket Code 020 Form V000A Page 2

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audio and/or videotape.

Edward M. Burr, Jr. resumes the stand and testifies further.

Receiver's exhibits 10 and 11 are received in evidence.

Mr. Burr is excused.

Counsel for Intervenors/Plaintiffs Dalembert, Roberts and Shah request that the court confirm the appointment of MCA Financial Group, Ltd. as Court-Appointed Receiver until further notice from the court. Discussion is held regarding this issue including the amount of bond to be posted by the Receiver, where the bond monies should be deposited and the protection of the substantial amount of money which the receiver would be responsible for.

The Intervenors/Plaintiffs Dalambert, Roberts and Shah's Order is signed by the court on November 8, 2010, and filed with the clerk on November 8, 2010.

A Rule 80(d) of Civil Procedure agreement between defendant, Gary Whiting and the receiver, MCA Financial Group, Ltd. is stated on the record to the effect that the receiver, MCA Financial Group, Ltd. shall use good faith to negotiate with defendant, Gary Whiting as to contracting with him to sell games for the company.

Legal argument is presented by counsel regarding whether that part of the settlement agreement with defendants, Karl and Diana Hiatt and Dark Comet Games, LLC which provides for the execution of a \$473,364.61 promissory to them from the company for monies used while the company was controlled by the prior receiver, Mr. Burr should be approved.

3:08 p.m. Court stands at recess.

3:25 p.m. Court reconvenes with respective parties and counsel.

Court Reporter Scott Coniam is present and a recording of the proceedings is made by audio and/or videotape.

Defendants, CME Board of Directors and CMG Board of Director's exhibits 19, 20, 49 and 53-57 are received in evidence.

Defendant, Gary Whiting's exhibit 70 is marked for identification and received in Docket Code 020 Form V000A Page 3

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evidence.

Plaintiffs' exhibits 71-77 are marked for identification and received in evidence.

Further argument is presented.

LET THE RECORD REFLECT the Court has excused the courtroom clerk at  $5:00~\rm p.m.$  and the hearing continues.

5:34 p.m. Court stands at recess and shall resume at 9:30 a.m. on November 9, 2010.